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The Border Papers

US and Canadian Immigration Policies

Marching Together to Different Tunes

Peter Rekai

In this issue...

Canadian immigration authorities will have to toughen up their screening and monitoring of visitors to prevent terrorists and criminals from joining the large numbers of entrants to the country ever year. Canada and the United States should cooperate on border security, though there is no compelling reason for Canada to harmonize immigration selection with its neighbour.

The Study in Brief

In the wake of the terrible events of September 11, 2001, and in the context of an increasingly integrated and security-conscious North America, both Canada and the United States have revisited their immigration policies.

Tightening up screening of immigrants and refugee claimants has been a significant focus for change in both countries. Tightening up screening and monitoring of visitors and other temporary entrants has also been a priority in the United States. This has not been the case in Canada, a particularly troubling omission given the expanding role envisaged for foreign temporary workers and international students. Indeed the lengthy processing and enhanced scrutiny accorded immigrants and refugee claimants may simply persuade would-be wrongdoers to seek their entry as part of the steady stream of foreign travelers who receive generous access to Canada.

The solution is not to reduce the inflow of temporary workers and other workers. Rather, Canada needs to know that these visitors will comply with the terms of their visas, attend the schools in which they are enrolled, work with their designated employers and leave the country when their visas expire. This compliance process will require more consideration and resources than the Canadian government has yet committed. It will also require that a greater burden of costs and responsibilities be assumed by the private and academic sectors that benefit directly from their presence.

In terms of the flow of people and related security issues at their common border, the United States and Canada share markedly similar problems and should continue to work together to resolve bilateral difficulties. It is in the interests of both countries to continue the trend toward formal cooperation and bilateralism that has been emerging for some years, but which has been accelerated and repackaged since September 11, 2001.

However, while security requires that the two countries move in tandem on a number of border issues, there is no compelling security rationale for Canada to harmonize its immigrant selection criteria with those of the United States. Canada has made the pursuit of young skilled immigrants a priority. This contrasts with the United States' continuing emphasis on family reunification — and its apparent tolerance for (or reliance upon) a significant labour force of illegal immigrants.

The Author of This Issue

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The Border Papers

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Can Canada really expect to maintain an independent and distinct immigration policy in a post–9/11 North America? The answer is a resounding and unequivocal "yes and no." This *Commentary* examines Canada's immigration goals and priorities with a view to finding an appropriate role for a nation that now finds itself with responsibilities that extend beyond its immediate territory.

Immigration policy has a split personality; it is a discipline dedicated simultaneously to keeping people out and bringing people in. Whether Canada can maintain this duality of purpose amid new pressures and responsibilities is the focus of this *Commentary*.

While the security side of this issue has been under particular scrutiny, the Canadian government has been busy renovating its immigrant selection policy, making it a sharper tool for economic planning. It is a policy markedly different, and in some ways better defined, than the one envisaged for migrants to the United States. It is also one that requires certain gates to the world to remain open, a course of action that seems difficult to reconcile with the increased pressures for tighter borders. Those pressures come from within the country and from its neighbour and principal customer, the United States.

In evaluating Canada's immigration policy, it is critical to understand where it converges with and differs from that of its US counterpart, where it is headed, where there is scope for cooperation, and where Canada needs to maintain distinct policies. This *Commentary* addresses these issues and concludes that while Canadian security interests demand a continental and even global focus, Canada's unique and innovative selection of immigrants and foreign workers should proceed. There is, however, an important proviso. The management and monitoring of the increasingly lucrative flow of temporary entrants through Canada's borders must be significantly enhanced. Here Canada is falling short of the high expectations and significant progress already made in this regard by the United States. Like that country, Canada should be looking to share the burden of managing the flow of international visitors, workers and students with those private sector interests who benefit directly from their arrival.

Where We Come From: Common Goals of Two Immigrant Nations

Historically, the United States and Canada have shared broadly similar values in viewing immigration as a cornerstone of nation building. Migration policies in the two countries have addressed the admission of those seeking permanent resident status (immigrants) as well as those seeking temporary entry (non-immigrants). The latter category has included limited-term workers, known as foreign workers, international students, business travelers and tourists.

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This *Commentary* does not address migration and labour issues under the North American Free Trade Agreement.

In both countries, immigration policies have

- sought to enhance and expand the population, geographical frontiers, and labour markets by attracting new permanent residents;
- considered family reunification as an important criterion in their selection of immigrants;
- included a humanitarian component to their selection and admissions policies, offering protection to the persecuted (refugees and asylum seekers) and the displaced;
- accepted and solicited temporary foreign workers to supplement their domestic workforces — particularly in the face of domestic skill shortages.

Table 1 compares the number of people admitted by category for Canada and the United States.

Admitting Permanent Residents: The Numbers

Canada

The policy platform of the governing Liberal Party in Canada's most recent general election[1] proposed an optimal annual number of new immigrants, known as *permanent residents*, equivalent to one percent of Canada's population. Immigration over the five years prior to 2001 was in the range of 0.6 percent-to-0.7 percent of the population, or between 200,000 and 225,000 immigrants per year (Canada 2001g). Immigration reached its highest level in almost a decade in 2001 with the arrival of 250,376 immigrants (Canada 2002a). The Liberal government still holds one percent as its eventual goal.

The 2001 census indicates that, in the prior five years, Canada experienced one of its lowest-ever rates of population growth. Immigration accounted for most of the growth that did take place. This census information seems to have triggered a renewed interest by the government to focus on a one percent immigration target.[2]

There are no estimates by the Canadian government on annual levels of illegal migration or on the accumulated total of illegal migrants currently in the country. Illegal migrants are those foreigners who have entered the country either without detection or through misrepresentation, or who have overstayed their allotted time. It would be fair to speculate that the number of illegal migrants in Canada is far less than the proportionate number in the United States due to Canada's lack of a shared border with any third country — particularly a populous developing one.

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1 This campaign promise contained in the Liberal Party Red Book was part of the platform of the Liberal Party in the 2000 election and remains the long-term goal of the government as indicated by the Minister of Citizenship and Immigration to the House of Commons in tabling the department's annual report on October 31, 2001, summarized in Canada (2001a).

2 While the government gives weight to the census findings as a factor in determining immigration targets, some critics maintain that demographic trends — the declining Canadian birth rate and aging population — are factors that are being overrated in the government's formulation of immigration targets. Demographer Daniel Stoffman argues this point in his recent book, *Who Gets In* (2002).

Table 1: ***Admission Numbers: Canada vs the United States, 2000***

Category of Admission	Canada *(as % of Canadian population)*	United States *(as % of US population)*
Permanent residents	250,000* *(0.8)*	1,064,000* *(0.4)*
Illegal immigrants	n/a	420,000 *(0.15)*
Temporary workers: including under NAFTA	89,000 *(0.3)*	1, 234,000 *(0.4)*
Foreign students	64,000 *(0.2)*	659,000 *(0.2)*
Refugees	27,000 *(0.08)*	66,000 (incl. Asylees) *(0.02)*
Visitors nonNAFTA	4,400,000 *(13)*	30,500,000 *(11)*

* Permanent resident figures for both countries are 2001.

Source: Noted in accompanying text.

The United States

The US Immigration and Naturalization Service (INS) reports that the United States admitted 1,064,000 new immigrants in 2001, equivalent to approximately 0.37 percent of the US population. This figure does not include the significant annual illegal movement of migrants to the United States, which the INS estimates at about 420,000 (United States 2002d, 1), or 0.15 percent of the US population. The US Census Bureau estimates there was an accumulated total of between 8.7 million and 10.2 million illegal migrants residing in the country in 2000,[3] comprising approximately three percent of the population of the entire United States.

The most recent census reveals that the United States has experienced a sudden jump in its population. This has been attributed to higher fertility rates among both its native and foreign-born population as well as to higher immigration levels. The US population growth rate outstrips the flat Canadian figure.[4]

Criteria used in selecting permanent residents in Canada and the United States reveals a dramatically different set of social and economic priorities.

Permanent Residents: Who Gets Chosen and Why

The respective criteria used in selecting permanent residents in Canada and the United States — where they are known as *green card* holders — reveals a dramatically different set of social and economic priorities.

Canadian policy has focused on the young, high-skilled immigrant. Roughly 60 percent of those arriving annually in Canada now fall in the category of economic immigrants (Canada 2001f). These include mainly skilled workers and their families and a relatively small business class.[5] Skilled-worker immigrants are selected under a point system that favours individuals with training and experience in skilled occupations, facility in both official languages, youth, and postsecondary education.

3 The Census Bureau notes an assumed undercount of illegal migrants of 15 percent, yielding a corrected figure of illegal migrants of 10,241,669. See website: www.census.gov/population/www/documentation/twps0061.html.

4 See "Special Report: Demography and the West," *The Economist*, August 24, 2002, p. 20.

5 Editor's note: Some commentators suggest that the actual number of skilled immigrants to Canada is much less because included in that number are the accompanying spouses and children who may not themselves be skilled. This may be true, but spouses and children of skilled immigrants are likely to have, or aspire to, similar skills and education. Furthermore, there are many skilled immigrants who are undercounted because they enter as refugees or sponsored family members. Also new computer selection criteria for skilled workers introduced in June 2002, credit applicants who have spouses with postsecondary degrees.

Roughly 25 percent of today's immigrants fall into the "family class," which is made up largely of the parents and spouses of financially eligible Canadians (Canada 2001f). Despite historic support by all Canadian political parties for the principle of family reunification, governments, through regulatory amendments enacted in the1980s and 1990s, quietly removed the right of Canadians to sponsor their siblings, aunts, uncles, and adult children for immigration. Many Canadians are still surprised to discover their ineligibility to assist extended family in the immigration process.

The remaining 15 percent of Canada's immigrant arrivals are comprised of refugees and related humanitarian classes (ibid.).

The United States continues to embrace family reunification as the foundation of its immigrant selection process. Approximately 64 percent of the annual legal immigrant flow to that country is composed of family-sponsored applicants (United States 2002a). Family petitions are processed in a priority sequence reflecting the closeness of the relative and allowing certain numerical ceilings based on countries of origin.

Only 17 percent (ibid.) of immigrants fall into an economic migrant category. These individuals are mostly sponsored by US employers. Another four percent (ibid.) are selected by a lottery designed to enhance a diversity of origin among US immigrants. A further 16 percent of immigrants are refugees and asylees (inland refugee claimants in the United States are referred to as "asylum seekers" or "asylees") and other humanitarian categories (ibid.).

The events of September 11, 2001, appear to have had little effect on the Canadian government's selection priorities for new immigrants.

Trends and Issues in Selecting Permanent Residents

Trends

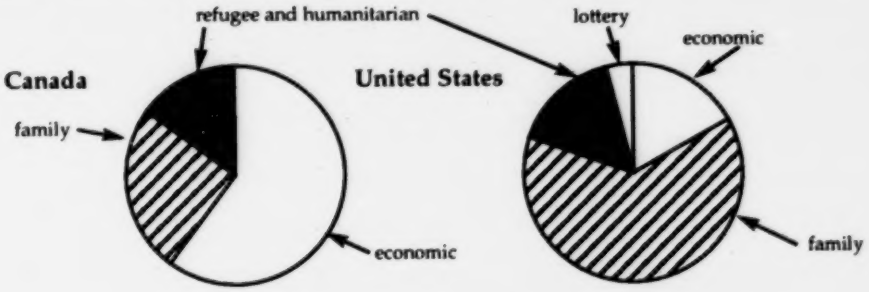
The events of September 11, 2001, appear to have had little effect on the Canadian government's selection priorities for new immigrants. The government remains committed to its annual numerical targets and to a policy of selecting highly skilled and educated applicants.

In the United States, the post–September 11, 2001, preoccupation with the enforcement and security side of immigration policy has delayed a broad reevaluation of some of the basic goals and principles of immigrant selection. The eventual direction chosen by the United States may determine whether it views Canadian selection policy as a critic, competitor or bystander.

In Canada, between December 2000 and June 2001, the Minister of Citizenship and Immigration previewed a comprehensive set of new regulations for implementation in late June 2002. These regulations added flesh to the enforcement and selection of the bare-boned Bill C-11, the *Immigration and Refugee Protection Act*, passed by Parliament in fall 2001.

On immigrant selection, these regulations were designed to maintain the current numerical targets while elevating further the eligibility standards and pass marks for the skilled worker class. The regulations were criticized by some as setting too high a standard of eligibility. They were also attacked for favouring university degrees, while assigning little value to skilled-trade programs and

Figure 1: ***Immigration Composition, Canada and the United States***



apprenticeships. A backlash, led by Liberal backbenchers, resulted in modest revisions of these criteria by a new immigration minister, Denis Coderre. The underlying message did not change: the government was raising its eligibility standards. Given the number of apparently qualified applicants queuing up in processing backlogs at Canada's offshore visa offices, the government likely concluded that it could raise standards and still meet its numerical targets for skilled workers.

A less controversial aspect of the proposed selection criteria was the removal of the requirement that skilled applicants fit into specific occupational niches known as *preferred occupations*. The department conceded that its list of preferred occupations, last amended in 1993, had never genuinely reflected actual current labour market demands. In addition to questionable labour market research and customarily late implementation, the preferred occupation lists were distorted by lobbying from protectionist, professional, and labour bodies. The new criteria permit consideration of candidates with expertise in most skilled occupations. They also favour those who have had postsecondary education or legal employment in Canada.

While the new federal immigrant selection criteria no longer target specific occupations, skills-specific recruitment remains a factor in immigrant selection. This recruitment has been outsourced to the provinces through a series of Provincial Nominee Programs (PNPs). Under these arrangements, a province or territory chooses its own skilled immigrants based on its own list of priorities. To qualify under a PNP, a potential immigrant must intend to reside in the specific province. That intention is usually supported by a local job offer, previous sojourns in the province or local family ties.

The list of provincially designated occupations ranges from hog farm managers in Manitoba to pipe fitters and petroleum engineers in Alberta and nurses in British Columbia. The federal authorities continue to process these immigrant applicants, while deferring to the occupational priorities outlined by the destination province. Ontario, which receives 60 percent of the country's annual immigrant intake (Canada 2001d, 7), does not yet participate in the Provincial Nominee Program, apparently wary of developing a costly parallel immigration program.

The PNPs offer the prospect of a better geographical distribution of immigrants. Currently 50 percent of all immigrants settle in Toronto, while 15 percent go to Vancouver, and 13 percent to Montreal (ibid.). A further 16 percent of immigrants settle in ten other Canadian cities (Canada 2001h), leaving six percent dispersed throughout the rest of Canada. This overwhelming movement to a single city is

not replicated in the United States, where immigrants are attracted to a broader range of large and mid-sized urban areas. To date, the PNPs are in their nascence, accounting for one-to-two percent of the national annual immigrant intake. The federal government is clearly enamoured of the programs, hoping they will lead to a wider distribution of immigrants — and perhaps also transfer more of the immigrant selection burden (administrative and financial) to the provinces.

Quebec operates an entirely separate selection policy for candidates who indicate they are destined for that province. The Quebec immigration program features its own selection criteria and offshore immigration offices. The Canadian government's role is to perform health and security checks and to confer Canadian permanent resident status. Immigration to Quebec accounted for 15 percent of the total immigrant flow to Canada in 2001 (Canada 2001d).

The continued operation of the Quebec program and an expected expansion of the PNPs (even without Ontario's participation) could soon see one-fifth of immigrants being selected by the provinces.

Issues

Prevention, not selection, remains the current focus of the US government's immigration agenda.

The initial controversy surrounding the minister's announcement of the new federal selection criteria for skilled immigrants had one particularly salutary effect. Unlike some of the previous policy shifts accomplished out of the public view through departmental policy and cabinet regulation, these changes sparked a public debate over the goals and expectations of the country's immigrant-selection process. Many Canadians who had previously identified immigration policy exclusively with family reunification, refugees or security issues, received an insight into the pragmatic economic objectives that underlie current Canadian policy. Throughout this debate, there appeared to be little evidence that Canadians were seeking to reverse the trend toward establishing a strong skills component into the selection system. Rather, much of the discussion focused on the appropriate levels and balance of skills and attributes that should define economic immigrants.

In the United States, the reorganization, upgrading, and rationalizing of protection and enforcement agencies and procedures under the banner of homeland security have dominated the immigration agenda. A mammoth Department of Homeland Security is in the works. It will absorb a multiplicity of enforcement agencies, including much of the Immigration and Naturalization Service (INS).[6] Prevention, not selection, remains the current focus of the US government's immigration agenda. Hence, a long overdue public debate about the objectives of the US immigrant selection process remains on hold.

Some US policy critics have drawn a connection between homeland security and continued high levels of legal immigration. One school of thought, advanced by the Center for Immigration Studies, a US immigration policy think tank and general proponent of a more restrictive immigration policy, proposes a pause or moratorium on the legal admission of new immigrants (Krikorian 2002). This, the Center argues, would permit the US government and its agencies to catch up with

6 See www.whitehouse.gov./deptofhomeland.html.

immigrant processing backlogs, make inroads into the illegal migrant community, and implement the new security mechanisms introduced since September 11, 2001.

A policy of substantially cutting back on legal immigration may not currently represent the mainstream view of either the White House or Congress. However, it has been adopted by some credible legislators, such as Congressman George Gekas, chairman of the House Subcommittee on Immigration, Border Security, and Claims. In June 2002, Gekas introduced an immigration bill that would reduce legal immigration by 20 percent. This would be accomplished by such measures as eliminating the diversity visa program (known as the visa "lottery") and removing the right to sponsor some family members.[7] This stance, previously viewed by many as extreme, has gained some currency within Congress. It is certainly conceivable that any further serious terrorist threats to the US mainland — or even a bout of higher domestic unemployment — could increase the support for this more restrictive approach.

The prospect of any future US moratorium or slowdown on legal immigration raises the question of whether the United States would expect Canada to show similar restraint. This would have serious implications for Canadian economic policymakers who have made immigrant selection a key part of their long-term economic planning.

Canada achieved much of its shift to a skills-based selection system in a depoliticized setting.

On the other side of the policy spectrum, the prospect of a secure and economically expanding United States poses a different kind of challenge to Canadian policy. Some US observers have urged the adoption of a Canadian-style selection system.[8] Australia, New Zealand, and the United Kingdom are currently recruiting skilled migrants. Other western European countries such as Germany are making their own preliminary and limited forays into the skilled migrant field. If the United States were to jump onto the bandwagon, an aggressive, skills-oriented US immigrant recruitment policy would provide stiff competition for Canada. For evidence of the lure of the United States, the Canadian government and business community need only recall their concerns over losing Canada's high-tech workforce to Silicon Valley during the dot-com boom.

Moving away from a family-based to a high-skills-based program could be popular with some US critics and legislators. It would likely be less popular with politicians representing regions with large new immigrant communities comprised of lower-skilled and less-educated newcomers. In particular, it may run against the hopes of the current administration to expand its influence among new Latin American constituents.

Canada achieved much of its shift to a skills-based selection system in a depoliticized setting. Apart from the minister, parliamentarians had little role in — or perhaps chose to ignore — a series of upgrades in the points system applied to skilled workers throughout the late 1980s and 1990s. Cabinet endorsed these changes by approving a series of regulatory changes.

A similar policy shift in the United States would almost certainly be run through a vigorous legislative and political gauntlet. For many, the abandonment of the United States' family-based program in favour of a Canadian-style "designer

7 "Gekas Announces Restrictionist Immigration Bill," AILA InfoNet, Doc. No. 02062731 (June 27, 2002).

8 For an example of a US critic's support of a Canadian model selection system, see Borjas (2001).

immigrant" program would offend the seminal frontier image of "huddled masses" embraced by Lady Liberty. Others would argue that the Canadian immigrant model would not be suited to the United States. They may have a point.

One argument is that the recent prolonged US economic boom was fuelled as much by an influx of both legal and illegal lower-skilled and lower-paid workers as by the increased numbers of foreign professional and high-tech workers. Foreign-born workers accounted for nearly half of the net increase in the US labour force between 1996 and 2000. Labor Department statistics show that foreign-born workers were paid 75 cents for every dollar earned by a US-born worker (Mosisa 2002). This may have accounted for the US economy's ability to create jobs without causing wage-led inflation.[9] It has also led to criticism that the US expanded its First-World economy with Third-World wages. This criticism is tolerated by those who assume that early hardships are a necessary but transitory phase in the US immigrant's traditional climb to prosperity.

If US policy can be accused of admitting an overworked, undereducated immigrant underclass, the Canadian system has been cited for producing an overeducated and underemployed newcomer class. Blame is often directed at Canadian professional licensing bodies' unwillingness to recognize or evaluate foreign training and degrees. Criticism is also directed at risk-averse Canadian employers who shy away from hiring candidates with "lack of local market experience." Thus, the concern remains that, as the Canadian government continues to ratchet up the eligibility criteria, without accompanying regard for employment mobility, Canada's immigrants will be underutilized in the workforce.

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Temporary Entrants: Foreign Worker Policies

The Numbers

Both Canada and the United States have developed temporary foreign worker programs that address some of their immediate skills gaps and knowledge needs.

The number of foreign workers admitted to Canada in 2000 was over 89,000 or 0.03 percent of Canada's total population (Canada 2001e, 4). Work permits are issued on a number of different grounds and are generated in response to employer requests. Eligible recipients of work permits include those providing a skill in short supply, those with specialized product knowledge, senior employees transferred by their companies, and a host of others.

The number of temporary foreign workers admitted to the United States in 2000 was 1,234,000, approximately 0.04 percent of the total population, with criteria for granting work permits similar to those used in Canada.

9 For a discussion of this view, see McAuley (2002).

The Canadian Model

Amid the recent debate over Canada's new immigrant selection criteria, less attention has been paid to the significant and innovative changes being made to its foreign worker policy.

Canada and the United States are among a small group of countries that welcome new permanent settlers to their midst. They are, however, also among many countries that have relied on the temporary admission of foreign workers to fill specific skills needs. Western European countries have admitted labourers from Turkey and North Africa, while the Gulf states host a vast foreign worker population, primarily from Pakistan, India, and the Middle East, that equals or exceeds its domestic work force. Singapore imports technology workers from China and India; Israel is home to Asian construction workers.

In most of the world, foreign workers typically remain "foreign." They enter the country on a temporary and specific work assignment with a local employer and they are expected to leave the country on completion of their term of employment. Foreign workers, even those who may have spent decades in a host country and who may have had children born there, can rarely expect citizenship for themselves or their families. By contrast, Canada has been both generous and pragmatic in permitting longer-term legal foreign workers to become permanent residents and, ultimately, citizens.

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Canada has benefited from foreign workers since the days when Chinese labourers were imported to build the transcontinental railroad. In the past few decades, the Canadian government's policy was to approve the hiring of foreign workers subject to a "Canadians first" policy. This policy almost always required a Canadian employer to first canvass the domestic market. Today, that test has been largely replaced by a broader set of criteria that recognizes a greater range of benefits that may be derived from hiring a foreign worker.

At the low end of the skills spectrum are several seasonal programs directed at agricultural workers who typically leave Canada at the end of a harvesting season.

The Live-in-Caregiver Program accommodates individually contracted, tax-paying and benefits-eligible caregivers. They are required to spend at least two full years as caregivers in Canadian homes, after which they can apply for permanent resident status in Canada. The program has alternately filled a child care deficit and, more recently, a home care shortage. A secondary benefit of the program has been the tendency of many caregivers upon immigration to gravitate to caregiving positions in hospitals, nursing homes and seniors' residences on immigration.

The Canadian caregiver program compares favourably with experience in the United States, where these types of domestic positions are often staffed by illegal workers who have little hope of regularizing their status.

In the late 1990s, Canada initiated an innovative program to attract foreign technology workers. The Software Developers Program (still in force as the Information Technology Workers Program) facilitated the entry of qualified and well-paid software developers from around the world. The Canadian program was well under way while the United States was debating whether to raise its quota on professional workers and while western European nations, such as Germany, were agonizing over the appropriateness of admitting foreigners for this purpose.

One of the advantages of a foreign worker movement is that employees go where they are needed — and stay there, at least until they get permanent-resident status and their guaranteed mobility rights under the Charter of Rights and Freedoms. These programs can alleviate specific regional labour needs and reduce the movement of new immigrants to Canada's three largest cities. In a federal-provincial meeting on immigration issues held in Winnipeg on October 15 and 16, 2002, federal Immigration Minister Denis Coderre formally recommended a program to expand the use of temporary foreign workers in areas of the country less favoured by new immigrants. The Minister suggested that foreign workers employed legally for five years under such a program would be immediately eligible for permanent-resident status (Canada 2002c).

In recent months, the Canadian government has indicated its willingness to negotiate a much wider range of foreign worker arrangements with specific employers and industries, at both the national and regional levels. An example of an industry-specific and regionally targeted policy is the Construction Workers Program, which the government negotiated at the end of 1999 with the Greater Toronto Homebuilders Association. The program addresses the critical shortages of certain building trades. It facilitates the hiring of a specified number of experienced construction workers in five different skills areas on a year-to-year basis. The agreement was secured with the consent of various construction unions and features local wage and working standards. Foreign bricklayers and carpenters, receiving the same $25 (minimum) per hour as their local counterparts do not threaten to undercut local rates of remuneration.

The Canadian government has indicated its willingness to negotiate a much wider range of foreign worker arrangements with specific employers and industries.

Company-specific agreements include permitting a new Manitoba meatpacking plant to hire 40-to-50 foreign meatcutters and allowing a chain of ski resorts to hire a contingent of seasonal workers.

The federal government recently institutionalized a program that specifically addresses lower skill shortages, setting criteria and parameters for employer requests for temporary foreign workers on the basis that they are taxpayers.[10]

Other changes in immigration regulations have provided additional incentives to attract skilled foreign workers. These include permitting their spouses (married, common-law and same-sex) to obtain work permits, while exempting their primary and secondary school-aged children from the student permit requirement. The provinces do their part by extending national health care coverage to most legal foreign workers.

A further attraction of filling labour needs with foreign workers is that the government approval process is much quicker and simpler than the lengthy one for permanent resident approval. Foreign workers are usually processed in weeks or months, while processing of permanent resident applications is measured in years. This enables Canadian employers to have the services of the workers when they are needed.

10 Citizenship and Immigration Canada and Human Resources Development Canada announced a Low-Skilled Temporary Worker Program in September 2002.

The US Model

Programs to accommodate various levels of skilled workers also exist in the United States. An "Americans first" labour market preference test (labour certification) is required for lower-skilled foreign workers. Professional and specialty workers face a less onerous test than lower-skilled workers or than their counterparts in Canada. Unlike in Canada, however, in the United States most professionals are subject to an annual numerical cap, which takes some time and political effort to adjust when urgent skills shortages occur — as was the case during the dot-com boom. As in Canada, these foreign workers can, with employer sponsorship, convert their status to permanent residence.

The United States has shown itself to be less beholden than Canada to the inhibiting influence of local professional associations. It has made ample use of foreign medical doctors and specialists in underserviced areas, while Canadian authorities have only recently begun to dismantle roadblocks erected by the Canadian medical establishment. The United States has been admitting a steady flow of foreign nurses to alleviate domestic shortages, while Canadian provincial nursing bodies have thrown red tape around the process of accrediting foreign nurses.

The United States has also readily accepted a wide range of postgraduate researchers, fellows and academics, who augment the country's research and development capabilities. Traditionally protectionist Canadian academic institutions, facing a shortage of professors and researchers, have now also started hiring abroad.

The United States has shown itself to be less beholden than Canada to the inhibiting influence of local professional associations.

There are fewer legal avenues in the United States than in Canada through which employers can hire lower-skilled foreign workers. The programs that do exist are administratively cumbersome and of limited application. That may be part of the reason that the United States has come to rely on a lower-skilled foreign work force, which is predominantly comprised of illegal migrants. This could change. The US labour movement, seeing opportunities to bring large numbers of new workers under its umbrella, has reversed its traditional objection to an amnesty for illegal immigrants (see Briggs 2001). Meanwhile, the Mexican administration and a Hispanic-friendly White House have been discussing a possible amnesty for the large number of Mexican nationals within the US illegal population. The events of September 11, 2001, also have had an impact on this discussion. The heightened concerns about security after the terrorist attacks have led some critics to amplify their calls to identify and deport "illegals." Others have concluded that it is more urgent than ever to identify and regularize the working illegals through an amnesty in order to bring them into the mainstream of US society and the economy.

Temporary Workers in Canada: Upgrading Security and Downloading Costs

The growing numbers of foreign workers in Canada, both skilled and less skilled, arrive at a cost. Currently, criminal and security screening of temporary workers at offshore Canadian visa offices is almost nonexistent. Unlike permanent resident applicants, foreign workers and international students are not required to provide police clearances from every jurisdiction in which they have resided as adults nor are they likely to be referred to security checks by Canadian intelligence agencies.

There is little or no evidence to date that foreign workers, whether they are software developers or caregivers, pose a threat to Canadian society. Nevertheless, prudence in a post–September 11, 2001, world demands a more complete security profile of applicants, many of whom seek admission to the Canadian labour market for a period of years. Efforts to heighten security for these applicants will represent an ambitious undertaking given that speed is of the essence in uniting prospective employees with their Canadian employers.

The ability to maintain speed in processing while adding additional layers of security will require more staff and technology. It is appropriate that the private sector, the immediate beneficiary of this skills movement, assume at least part of the additional financial burden.

Another challenge of administering a temporary worker program is to ensure that its participants depart when their work permits expire. While some temporary workers, such as live-in caregivers, have a specific route to permanent residence, most temporary workers are expected to return to their home countries on completion of their Canadian work assignments.

In the absence of any exit-control system, immigration officials have little chance to follow up with individuals who have left their authorized employers or who have stayed beyond their allowed time in the country. Here, too, sponsoring employers should share a greater responsibility in advising immigration authorities if, when and why a foreign worker has left their employ or has otherwise contravened terms of entry. While employers already bear this obligation legally, in the absence of fraud or misrepresentation the failure to discharge this responsibility rarely carries punitive consequences.

A greater onus must be placed on employers to ensure their temporary foreign workers comply with visa requirements.

A greater onus must be placed on employers to ensure their temporary foreign workers comply with visa requirements. This will become even more important in light of the federal government's intention to expand the role of temporary foreign workers in the Canadian economy.

Refugees

In both Canada and the United States, refugees and refugee policy have received considerable attention in the security-conscious world since September 11, 2001.

Both nations base their acceptance and treatment of refugees on principles outlined in international conventions and protocols to which they are signatories. Refugees are individuals offered protection due to their well-founded fear of persecution in their home countries for reasons of race, religion, nationality, political opinion or membership in a social group. Refugee claimants are people who have made a claim for protection that has not yet been decided.

Canada and the United States derive a portion of their refugee intake from United Nations-designated migrants abroad and from claims made by those who have already reached North America.

Through an expanding body of case law, both countries have seen a steady widening of the legal definition of a refugee, including broader interpretation of concepts of persecution, state protection, political opinion and religious belief. Critics in both countries maintain that the definitions have been stretched to the

point of becoming meaningless and that the lines between the persecuted and the economically motivated have become hopelessly blurred. Defenders of the system contend that the current interpretations reflect the realities of complex modern global politics, with its varying and often subtle forms of oppression and persecution.

A recurring theme of criticism (see, for example, Collacott 2001) of Canadian refugee policy suggests that Canadian refugee tribunals are a softer touch than their US counterparts, with a higher rate of acceptance of refugee claims. The Canadian government says the acceptance rates are almost identical.[11] These types of comparisons are meaningless without a similar statistical base and without a profile of the backgrounds and origins of the refugee claimants arriving in the two countries.

Both Canada and the United States have multi-tiered adjudication processes for inland refugee claimants which are typically slow and cumbersome. The question of Canada's ability to track refugee claimants during the claims process has been a source of controversy within Canada and an issue between US and Canadian authorities. Although the United States has been critical of Canada for allowing its refugee claimants to slip over the US border, the Canadian government maintains that the majority of refugee claimants in Canada arrived through the United States.[12] These arguments should become moot with the signing of the "safe third country" agreement discussed below.

The case of Ahmed Ressam demonstrated for US authorities the flaws in the Canadian refugee system.

Canadian law permits interim detention of refugee claimants who are considered possible threats to the public or flight risks. However, lack of intelligence to identify high-risk claimants and a lack of detention facilities have limited the number of detention orders. Humanitarian considerations have also played a role, particularly in the face of potentially lengthy incarceration of children.

Prior to September 11, 2001, typical refugee claimants were interviewed for half an hour, fingerprinted, had their photograph taken and released with instructions to return when contacted by Citizenship and Immigration Canada. A security clearance was sought only if it was determined that the claimant was a genuine refugee, which could be several years after arrival.

Prior to the terrorist attacks in the United States, Washington was concerned that untracked refugee claimants in Canada were slipping into US labour markets. Now, the concern is that they may be threats to security. The case of Ahmed Ressam demonstrated for US authorities the flaws in the Canadian refugee system. Ressam arrived in Canada in 1995 on a false passport, made a refugee claim, then abandoned it and was ordered deported. He purchased a valid Canadian passport under a false name and lived undisturbed in Montreal until December 1999, when he attempted to enter the United States with a car full of explosives. He was convicted in 2001 of attempting to blow up the Los Angeles airport. Ressam's story raises a broader range of questions than the refugee issue, including concerns about Canada's

11 In 2001, then Immigration Minister Elinor Caplan said that Canada accepts 57 percent of all refugee claimants while the United States accepts 53 percent (reported in the *Toronto Star*, December 5, 2001).

12 On April 30, 2002, Deputy Prime Minister John Manley told the House of Commons that 72 percent of refugee claimants who had arrived in Canada so far this year had come through the United States and that in 2001, 60 percent had done so (*Globe and Mail* [Toronto], May 1, 2002, p. A1).

ability to keep track of people subject to enforcement, execute removal orders and appropriately secure its passport procedures.

Refugee Policy: The New Reality

Since September 11, 2001, neither the United States nor Canada has indicated any intention to renege on any treaty or domestic commitments to accept genuine refugees. Both countries have, however, moved to tighten admission procedures and supervision of refugee claimants.

In July 2002, in an effort to minimize "asylum shopping," the two countries announced a draft "safe third-country agreement." Under the proposed accord, refugee and asylum claimants arriving from either side of the border would be returned to that country to pursue their claims. This would limit access of asylum seekers to the refugee-determination system of the country in which they arrived first (United States 2002c).

On the issue of detention, Canada has signalled its preparedness to seek interim detention of refugee claimants, particularly those whose documentation and identity are in question. Prior to September 11, 2001, detentions were rare, though not unheard of. In September 1999, for example, Canadian immigration officials successfully secured the detention of refugee claimants from the Chinese province of Fujian who arrived on the coast of British Columbia. These detentions were secured on the basis that the migrants were perceived to be flight risks, rather than security threats.

In October 2001, Citizenship and Immigration Canada confirmed plans to conduct more thorough front-end screening of refugee claimants and increase the use of detention for security reasons. It is expected that this will result in more detentions for longer periods.

Canada and the United States have promised to share information and intelligence on refugee claimants and any individuals and organizations designated as engaging in terrorist activities (Canada 2001c). In addition, both governments have implemented serious new penalties to combat people smuggling. In Canada, a smuggler now faces life imprisonment and a fine of $1 million.

The enforcement provisions of Canada's new *Immigration and Refugee Protection Act* clarify and strengthen the government's ability to detain flight risks, deny refugee protection to terrorists and permit the expulsion of terrorists, security risks and war criminals. All of these new measures will be meaningless, however, in the absence of competent intelligence to identify potential wrongdoers. In a move to address this problem, Ottawa has approved the establishment of specialized teams with appropriate expertise to administer security screening of refugee claimants on their entry to Canada.

The importance of being able to determine the identity and origin of all foreign arrivals in North America is critical for security purposes. Before condemning all migrants who bear false identification, however, it should be understood that refugees fleeing persecution often have to resort to false documents to be allowed to leave their homeland.

With the advent of more front-end scrutiny and the greater likelihood of detention, arrival as a refugee claimant, particularly an undocumented one, has

become a challenging way to enter Canada — so challenging that one wonders whether sophisticated wrongdoers will submit to this level of scrutiny. It is worth noting that had Ressam gone "underground" as an overstaying visitor, he would have received even less attention from Canadian authorities than he did as a documented former refugee claimant. Entry as a visitor will offer a path of less resistance for a potential terrorist.

Visitors: The Path of Less Resistance

The *modus operandi* of the 9/11 terrorists suggests they understood that the weakest link in North American border security lay in the admission and monitoring of tourists, international students, business people and other temporary entrants.

Entry into either country as a refugee or asylee involves interviews, fingerprints, photographs, hearings, background checks and possible lengthy detention. The applicant being processed for permanent-resident status through a Canadian visa office abroad must wait between one and seven years for paper screening, medicals and security and criminal record checks to be completed before arriving in Canada. Similar waits face the applicant for a US green card. It is becoming less likely that future terrorists will subject themselves to this kind of scrutiny and delay, particularly when there are easier options for entry.

Entry as a visitor will offer a path of less resistance for a potential terrorist.

For those who require visitor visas, the average designated time for a consular officer to examine and assess an application can be measured in minutes; the average interview with a visa-exempt traveler arriving at a Canadian or US airport or land crossing can be measured in seconds.

In 2000, Canada admitted more than 4.4 million non-US visitors. Canada's total non-US visitor intake is about 20 times greater than its annual intake of permanent residents and roughly 100 times greater than the annual number of refugee claimants.

The annual number of legally admitted visitors to the United States is about 30.5 million, excluding Canadians and Mexicans. This figure represents more than 30 times the combined number of new permanent residents and refugee or asylum claimants.

The Canadian and US economies, particularly the hospitality, transportation and leisure sectors, are highly dependent on the liberal flow of international business travelers and tourists. Similarly, the North American education sector has become increasingly dependent on the high tuition fees paid by 660,000 international students entering the United States annually (United States 2000b) and the 64,000 foreign students entering Canada (Canada 2000).

To gain admission to the United States, nationals of most countries require formal visitor visas issued by US consular posts abroad. The balance, usually citizens of industrialized countries, can simply board an aircraft and present themselves at an airport immigration counter. Canada also requires nationals of most countries to obtain formal visitor visas, but its list of visa-exempted countries is somewhat lengthier than that of its US counterpart, reflecting primarily the addition of a number of small Commonwealth jurisdictions. (See Box 1.)

The INS has complained that individuals who need visas to enter the United States but are visa exempt in Canada have used Canadian admission to slip surreptitiously into the US underground labour force. South Koreans have been an

Box 1: *Countries for Which Visas are Waived*

Country	Canada	United States *(Visa Waiver Program)*
Andorra	✓	✓
Antigua and Barbuda	✓	
Australia	✓	✓
Austria	✓	✓
Bahamas	✓	
Barbados	✓	
Belgium	✓	✓
Botswana	✓	
Brunei	✓	✓
Costa Rica	✓	
Cyprus	✓	
Denmark	✓	✓
Finland	✓	✓
France	✓	✓
Germany	✓	✓
Greece	✓	
Iceland	✓	✓
Ireland	✓	✓
Israel	*(National Passport holders only)*	
Italy	✓	✓
Japan	✓	✓
Liechtenstein	✓	✓
Luxembourg	✓	✓
Malta	✓	
Mexico	✓	
Monaco	✓	✓
Namibia	✓	
Netherlands	✓	✓
New Zealand	✓	✓
Norway	✓	✓
Papua-New Guinea	✓	
Portugal	✓	✓
San Marino	✓	✓
Singapore	✓	✓
Slovenia	✓	✓
Solomon Islands	✓	
South Korea	✓	
Spain	✓	✓
St. Kitts and Nevis	✓	
St. Lucia	✓	
St. Vincent	✓	
Swaziland	✓	
Sweden	✓	✓
Switzerland	✓	✓
United States	✓	*(not applicable)*
United Kingdom		✓
Uruguay		✓
Western Samoa	✓	✓

Sources: United States, Department of State website, www.travel.state.gov/vwp.html; Citizenship and Immigration Canada website, www.cic.gc.ca/english/visit/visas.html.

The US Visa Waiver Program (VWP) allows citizens of 29 countries to enter the United States without a formal visitor visa; Canadian citizens do not require a passport to enter and therefore are not on this list.

Canada waives visitor visa (now called the Temporary Entry Visa) requirements for citizens of 46 countries. In addition, visas are unnecessary for the following categories of people:

- Those people lawfully admitted to the United States for permanent residence who are in possession of their alien registration card (green card) or can provide other evidence of permanent residence.
- British citizens and British Overseas Citizens who are re-admissible to the United Kingdom.
- Citizens of British dependent territories, who derive their citizenship through birth, descent, registration, or naturalization in one of the British dependent territories of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena or Turks and Caicos Islands.
- People holding a valid and subsisting Special Administrative Region passport issued by the Government of the Hong Kong Special Administrative Region of the People's Republic of China.
- People holding passports or travel documents issued by the Holy See.

ongoing issue in this regard. In the terrorist-attacks climate, however, it is security rather than unauthorized employment that has become the primary concern — hence the recent US discussions with Ottawa about harmonizing visitor visa policy for Saudis. Saudi Arabia has traditionally provided a modest flow of affluent and law-abiding travelers and students to Canada. Although the United States requires visitor visas of Saudi citizens, until recently Canada did not.

Nevertheless, the recent Canadian decision to proceed with a visa requirement for Saudis should not have been a difficult one for Canada. Quite apart from the US interest in this issue, the prevalence of Saudi passports among the terrorists should be regarded as a security concern for any western nation. Furthermore, Saudi Arabia has a long-standing visitor visa requirement for Canadians, which, according to diplomatic custom, calls for reciprocal treatment.

Apparently under US pressure, the Canadian government also recently imposed visitor visas on citizens of Malaysia. The rationale for Malaysian citizens is nominally related to that country's passport's apparent vulnerability to abuse, but it is almost certainly also connected to concerns about the activities of Islamic militant organizations in Malaysia. If such fears are well-founded, then the revocation of the visa exemption would appear to be justified on grounds of national interest.

For its part, Canada receives a portion of its illegal migrants and a significant portion of its refugee claimants through the crossborder migration of nationals who enjoy visa-free visitor access to the United States, but not to Canada. Until the recent collapse of their economy, Argentines were among that group, with many migrating to Canada from the United States and making refugee claims.[13]

Rethinking Visitor Admissions

Since September 11, 2001, the definition of a "good risk" for the purpose of issuance of a visitor or student visa to Canada or the United States has changed dramatically.

The suitability of potential visitors previously focused on the likelihood of their returning home on completion of their Canadian or US stay. Affluent, educated and gainfully employed applicants with jobs and families to go home to have fit the classic low-risk profile. At first blush, the September 11 terrorists did fit this profile and each was apparently granted initial legal entry to visit or study in the United States.[14]

In the wake of the airliner attacks, US officials raised the level of scrutiny of visitors. Politics and ethnicity have become significant components of the new security-inspired visitor profile. Detection measures now include high-tech examination of passports and visas, profiling individuals from certain countries and obtaining passenger names from airlines. In addition, to permit more breathing

13 The number of refugee claims in Canada by Argentines rose from 79 in 1998 to 1,111 in 2000, raising it from the 44th largest source country for refugee claimants in 1998 to the sixth largest in 2000 (Canada 2000).

14 It has recently been revealed that 15 of the 19 terrorists were granted visitor visas based on dubious and incomplete information provided in their visa applications. US embassy officials appeared to have ignored existing visa issuance criteria in granting these visas. (See Mowbray 2002.)

room for its consular officers, the United States has recently issued new time standards that have resulted in delaying temporary visa issuance to nationals of a specified list of countries.[15] New regulations, some of which are mandated by the *USA Patriot Act*,[16] call for the urgent development of fraud-resistant documents and biometrics identification and tracking technology.

In the United States, a great deal of attention has been directed recently at the inability of immigration authorities to effectively monitor visitor visa compliance. The INS has admitted that it has not had the resources or systems effectively to keep track of legally admitted students who may have quit their schooling or visitors who have overstayed. There are 74,000 US educational institutions approved for student visa issuance, ranging from Ivy League universities to beauty schools and dance academies. A recent spot check of visa-approved schools within a radius of the Chicago INS office revealed that, out of 30 institutes, only four were in existence and only one was at the address listed by the INS (Becker and Gibson 2002). Previous attempts at seeking the cooperation of US educational institutions in monitoring international students were effectively derailed by the universities themselves (Grimaldi 2002). Now, educational institutions will be expected to assume a role in tracking their students. The White House has mandated that an automated foreign-student tracking system, first proposed in 1996 as a pilot program, will proceed as a full program in 2003 (United States 2002b).

Now, educational institutions will be expected to assume a role in tracking their students.

On the issue of visitors, the US administration has signalled the urgency of developing a comprehensive entry- and exit-tracking system to be integrated with the databases of other law enforcement agencies. The test phase of the national security entry-exit registration system was implemented in September 2002 at selected ports of entry and targets nationals of Iran, Iraq, Libya, Sudan, and Syria. Visitors from these countries have their fingerprints taken and matched to a database of known terrorists. They are required to confirm periodically where they are living and what they are doing, as well as to confirm their exit from the country. Once fully developed, the comprehensive entry-exit system will apply to nearly all foreign visitors.[17]

In Canada, there appears to be no progress to date on developing an entry-exit monitoring system for temporary entrants. Once past the post at a Canadian port of entry, a visitor is basically off the radar screen for tracking purposes. There is no record of the length of stay or of any departure from the country.

Compared to the US initiatives, Canada's independent moves to screen visitors have been modest, consisting of:

- temporarily redeploying federal police officers to "national security duties"; hiring new staff for ports of entry;
- upgrading technology and training;
- improving coordination among law enforcement agencies;

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15 These are the countries that the US Department of State regards as sponsors of terrorism — namely, North Korea, Cuba, Syria, Sudan, Iran, Iraq, and Libya (see http://travel.state.gov/section306.html).

16 Pub. L. No:107-56, 115 Stat. 272, originally introduced as *The Unity and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.*

17 See "AG Announces Partial Implementation of Special Alien Registration Program," AILA InfoNet, Doc. No. 02081370 (August 13, 2002).

- increasing the number of Immigration Control Officers posted overseas.

Canada has also recently required its visa offices to defer temporary applicants from certain designated countries for several days of additional scrutiny.

There have been no significant staff increases in overseas visa offices to help assess visitor visa applications, however, nor are there any plans to improve monitoring of visa compliance. The latter is a significant omission given Citizenship and Immigration Canada's admission that between July 2001 and February 2002 it had lost track of 118 Tunisians who entered Canada as foreign students, but who had effectively vanished.

Canadian educational institutions are the principal beneficiaries of the growing foreign student movement. Like their counterparts among Canadian employers, they should be expected to take a larger role in matters of visa costs and compliance. Secondary schools, English-as-a-second-language courses, trade schools, colleges and universities can attract foreign student tuition of up to $20,000 per academic year. For its part, Ottawa charges $100 to process a student permit. A more realistic fee, perhaps in the range of $500, would cover a greater share of the costs of assessing a student visa applicant, including enhanced security screening.

The lack of movement on visitor security issues, particularly on tracking, suggests that these are not priority concerns of the Canadian government. Alternatively, it may mean that Canada is allowing the United States to carry the ball in developing and funding new monitoring systems and technologies. Once that country has a system up and running, it will certainly expect immediate Canadian participation. The time for Canada to have input into this process is now.

Canadian-US Cooperation: The Perimeter and Beyond

The Perimeter

September 11, 2001, shook the confidence of US residents in their border security and drew particular attention to their northern frontier. US public opinion demanded — and the US government delivered — a higher level of resources to the Canadian border, including a temporary contingent of the National Guard and a pledge to hire additional border officers. These security upgrades, while undoubtedly providing a higher comfort level to US citizens, need to be put into appropriate context.

Nine thousand INS Border Patrol agents are assigned to the Mexican border (United States 2000a), which remains the chief entry point of illegal migrants into the United States. By contrast in October 2001, just 334 INS Border Patrol agents were monitoring the 8,900 km border with Canada (Ziglar 2001). The provision of additional human and technological resources recently approved by Congress for the US-Canadian frontier offers additional comfort. Realistically, however, the low US success rate in enforcing the much shorter and more heavily guarded Mexican border carries an obvious message: no wall can be built through 8,900 km of mountains, forests, lakes, and bifurcated border communities.

US attempts to tackle border security alone would seriously bureaucratize the border, upset crossborder commerce in both directions and create a trade nightmare for Canada. These efforts would not, however, come close to sealing the border. Once present in Canada, a determined wrongdoer could continue to find his way south somewhere along this very long frontier. This view was apparently shared by two INS agents who informed the media in autumn 2001 that Michigan's almost 1,300 kms of border with Canada was guarded by only 28 field agents, one working boat, several damaged electronic sensors and one broken remote camera. Given Washington's allocation of new resources to the northern border, these agents should now be less lonely and somewhat better equipped. They are still very far from being in a position to turn the United States into a gated community.

The pursuit of a unilateral border protection strategy is not a viable security or trade option for either the United States or Canada. In recognition of this reality, both countries have accepted the need to cooperate and coordinate their approaches to securing their borders.

While Canada has been passive in the development of its own initiatives to monitor visitors in the country, it has been much more active on border security matters, where it has proposed a series of cooperative measures to US officials (Canada 2001b). These include the sharing of information between the two countries and the development and use of more sophisticated technology, such as "smart" identity cards and biometric identification.

The pursuit of a unilateral border protection strategy is not a viable security or trade option for either the United States or Canada.

Both countries have pledged to implement tougher investigative and detention powers as well as more streamlined expulsion processes. The wider use of existing powers is coupled with the expanded enforcement powers offered by the *USA Patriot Act* and Canada's *Immigration and Refugee Protection Act*. Both countries have also agreed to discuss the merits of a common, or at least a similar, list of visitor visa-exempt countries. Ottawa views this as a concession, since it has regarded visitor-visa policy as a sovereignty issue. For its part, Canada has been able to exact commitments from the US administration to keep goods and services flowing smoothly over the border. Many joint initiatives are proceeding in this area under the "smart border" heading.

The United States and Canada have proposed a number of initiatives in joint staffing, patrolling and policing the frontier. These were enumerated in the jointly issued December 2001 Smart Border Declaration[18] progress report with its 30-point plan to improve border security and elaborated on in a September 11, 2002, Smart Border progress report (United States 2000e). The declaration addresses initiatives in the areas of the secure flow of people, goods and information, as well as sharing the development of secure shared infrastructure.

Other recently announced security initiatives include permission granted to US customs officers to be on hand at Canadian ports to assist in the screening of cargo destined for the United States. Canadian customs officers will be offered the same role at US ports (Canada 2002c). Five new integrated crossborder teams have been established as intelligence-led units, made up of a multidisciplinary force of customs, police, and immigration officials from both sides of the border. These officials will

18 Available at website: www.dfait-maeci.gc.ca/anti-terrorism/can-us-border-e.asp.

cooperate with other enforcement agencies from the various levels of government. The teams will target crossborder criminal activity, including illegal migration.

This cooperative spirit between the two North American neighbours is not exclusively a product of the events of September 11, 2001; rather, the terrorist attacks accelerated a process that had been under way for some years. A confidential Canadian government memorandum of March 8, 2000, summarizes discussions that had taken place with the United States since the late 1990s.[19] It enumerates many of the joint security measures contained in the post–attack Smart Border declarations, including joint investigations and operations, intelligence sharing, coordination of visas, asylum and removals issues and front-end refugee screening. The memorandum even referred to $354 million in expected funding between 1999 and 2003 on these and other initiatives.

The Canadian government has acknowledged discussions with the United States about a "joint regional approach" to immigration as part of a "Border Vision Process" initiated in 1997 (Canada 2002d). The discussions have centred on enhanced cooperation and harmonization of various border policies.

The concept of the much-heralded Permanent Resident Card, which now replaces the easily copied Record of Landing document, had also been discussed for 15 years with a pilot project actually resulting in the production of some cards in the mid-1980s.

Beyond...

Canada's proximity to the United States creates unique security challenges and responsibilities. Cooperation in the protection of the continent's borders is more than a Canadian concession to its trade interests; it is also in Canada's own security interest. Security against terrorism depends on being a party to reliable intelligence and to the use of leading-edge technology and comprehensive air, land, and sea surveillance. Canada simply is not in a position to ignore US leadership and resources in any of these areas, nor should it be.

Most countries will find it in their interest to enhance the security of their borders. Moreover, these countries increasingly will rely on each other's intelligence and policing skills to achieve these goals. Global security will be pursued through a high level of international cooperation and interdependence. Countries will owe each other a higher standard of care in monitoring the safe movement of people. To this end, they will agree to relinquish some of their exclusive management of their own ports of entry and departure in the interests of collective security.

Canada is no stranger to the extraterritorial application of its security interests, having pioneered the practice of stationing its own Immigration Control Officers in foreign airports. There are currently 48 such officers and more are planned. These officers have assisted in the detection of persons heading for Canada with false documents or contraband. Canada is currently training US officers to perform similar duties abroad.

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19 The document was obtained under the *Access to Information Act* by lawyer Richard Kurland and published in Lexbase, October 2002.

The successful deployment of Canada's Immigration Control Officers suggests that the country's security perimeter extends well beyond national or continental boundaries. "Interdiction" and "prevention" will be the preferred methods of defence. The ability to anticipate and thwart the plans of dangerous travelers before they are under way to their destinations will be the focus of security efforts in North America and abroad.

Conclusion

Canada and the United States can and should maintain independent immigration policies. That spirit of independence will be tempered, however, by the knowledge that the two countries are inextricably linked by geography and commerce. Neither party can reliably secure its lengthy common border without the other's cooperation. Nor can either country risk the commercial gridlock likely to ensue from a unilateral attempt to shut down its borders.

Thus, it is in the interests of both countries to continue the trend toward formal cooperation and bilateralism that has been emerging for some years, but which has been accelerated and repackaged since September 11, 2001.

Changes planned or undertaken in regulations, procedures and attitudes have focused on the better and closer management of the flow of people and goods across the border.

Despite some finger pointing in both directions, the two countries share markedly similar problems in border security. Better intelligence about terrorist groups, human smugglers and other criminals will provide visa officers and border inspectors with stronger tools. Improved examinations at ports of entry and interceptions at foreign points of embarkation will provide additional layers of defence. Better technology, higher funding levels, more human resources and more sharing of information among national, continental, and international law enforcement agencies will make a difference.

Offshore applicants for permanent resident status, already subject to criminal and security checks, will go through more extensive screening. In-country refugee claimants will find initial identity checks to be more thorough and the prospect of interim detention more likely — particularly in Canada, where this has not been the norm. In the face of such enhanced screening, sophisticated wrongdoers will be tempted to avoid this scrutiny in favour of joining the vast numbers of tourists, business travelers and international students that are granted generous access to North America.

Neither Canada nor the United States needs to reduce the inflow of temporary entrants. But both countries need to know that these visitors will comply with the terms of their visas, attend the schools in which they are enrolled, work with their designated employers and leave the country at the expiry of their status. This compliance process will require more consideration and resources than the Canadian government has yet committed — and higher expectations of the private sector. The US government appears to be taking hold of this admittedly ambitious undertaking, in part by improving its own tracking systems, but also by placing greater responsibility and liability on the shoulders of the commercial and academic sectors, which are direct beneficiaries of the large influx of temporary entrants.

While the United States and Canada are bound to move in tandem on many security and border issues, they can act separately on matters related to immigrant selection. On this issue, Canada has picked a path that is markedly different from that of its neighbour. It has made the pursuit of young, skilled immigrants and temporary workers an element in a strategy to address looming demographic challenges and skills shortages. The strategy is not without its critics. It is, however, a well-defined and rather pioneering approach to a policy area that challenges and frightens legislators worldwide.

The United States, understandably preoccupied with homeland security, has not yet focused on the characteristics or size of its legal immigrant flow. It ultimately may decide to ignore, reject, or compete with the Canadian immigrant and temporary worker models. The two countries can choose to disagree on these issues.

The acceptance of an increasingly harmonized, continental approach to border maintenance does not require the abandonment of a "made-in-Canada" immigrant selection policy that is geared to meeting domestic priorities. There are limits to cooperation, even between good neighbours.

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